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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Petition of Ameritech for Forbearance from)
Dominant Carrier Regulation of its Provision)
of High Capacity Services in the Chicago LATA)

CC Docket No. 99-65

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MCI WORLD COM OPPOS

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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March 31, 1999

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MCI WORLDCOM OPPOSITION

I. Introduction and Summary

MCI WorldCom, Inc. (MCI WorldCom) hereby submits its opposition to the petition for forbearance filed by Ameritech on February 5, 1999 in the above-captioned docket. Ameritech requests that the Commission regulate it as a non-dominant carrier in its provision of high capacity services in the Chicago LATA.¹ Specifically, Ameritech seeks relief from the Part 61 dominant carrier tariff rules, the Part 61 price cap rules, and the Section 69.3(e)(7) rate averaging requirement.²

The Commission need not, and should not, conduct a full-scale analysis of the high-capacity services market in the Chicago LATA. Instead, the Commission should act immediately to deny Ameritech's petition on the grounds that the LATA-specific relief that Ameritech seeks would be contrary to the public interest and thus fails to

¹Petition at 7.

²Id.

satisfy the Section 10(a)(3) public interest criterion. As the Commission has demonstrated by its recent request that parties update the record in the pricing flexibility phase of the access reform proceeding, the public interest is best served by addressing pricing flexibility issues on a national basis.

If the Commission does proceed to conduct a full-scale forbearance analysis addressing each of the three statutory criteria outlined in Section 10 of the Act, then it must find that Ameritech's petition fails to satisfy these criteria. As shown below, the Commission's dominant carrier rules (1) remain necessary to ensure that Ameritech is charging just, reasonable, and not unreasonably discriminatory rates; (2) remain necessary to protect consumers from paying rates that are not just and reasonable; and (3) are consistent with the public interest.

The Commission's dominant carrier rules remain necessary because Ameritech continues to possess market power in the market for high capacity services in the Chicago LATA. Contrary to Ameritech's claims of widespread competition, the record shows that Ameritech's high capacity customers have no alternative sources of supply on the vast majority of routes in the Chicago LATA. Ameritech thus continues to have the ability to "raise prices above competitive levels and maintain that price for a significant period, reduce the quality of the relevant product or service, reduce innovation or restrict output profitably."³

³See In the Matter of COMSAT Corporation, File No. 60-SAT-ISP-97, Order and Notice of Proposed Rulemaking, rel. April 28, 1998, at ¶67 (Comsat Order).

The rules adopted in the expanded interconnection proceedings, particularly the density zone pricing provisions, were crafted precisely to address the early stages of competition that exist in Ameritech's region -- limited competition on a few routes in the central business district of major cities. To the extent that special access competition has advanced beyond the point contemplated by the expanded interconnection orders, which is not the case in Chicago LATA, any changes to the dominant carrier rules should be considered in CC Docket No. 96-262, not on an ad hoc LATA-specific basis.

II. Ameritech's Petition Fails the Public Interest Test

Section 10 allows the Commission 12 months in which to deny a petition for forbearance for failure to meet the requirements of Section 10(a). The Commission should, however, reject Ameritech's petition immediately for failing to satisfy the public interest test -- the third prong of Section 10(a) -- because the issues raised by Ameritech are already being addressed in the pricing flexibility phase of the CC Docket No. 96-262 access reform proceeding.

It is well-established that the "choice between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency."⁴ The Commission has already decided to address the issues raised by Ameritech's petition -- the extent to which dominant carrier rules may need to be modified in an environment of evolving competition -- in a general rulemaking. In fact, the Commission specifically asked, in the Access Reform Notice, whether "high

⁴SEC v. Chenery Corp., 332 U.S. 194, 203 (1947).

capacity services, e.g. those special access services offered at speeds of DS1 or higher, should be removed immediately from price cap regulation.”⁵ And the Commission only recently gave interested parties, including Ameritech, the opportunity to refresh the record in that proceeding.⁶

Given that the Commission has chosen to address special access pricing flexibility issues by rulemaking, it would not be in the public interest to proceed further with the ad hoc approach requested by Ameritech. As the Commission has stated, when there are important consequences for the entire telecommunications industry, “the coordinated and comprehensive approach made possible by a rulemaking will reduce industry uncertainty, while ensuring the smoothest possible transition to any new rules that may be necessary.”⁷ The ad hoc LATA-specific relief that Ameritech requests in its petition is obviously inconsistent with such a “coordinated and comprehensive approach.”

On the rare occasions when the Commission has addressed pricing flexibility issues on an ad hoc basis, it has done so only when there was no general rulemaking underway and after finding, for example, “factors [that] generally distinguish the economic conditions existing in the New York City metropolitan area from other areas

⁵Access Reform Notice at ¶153.

⁶Public Notice, FCC 98-256, October 5, 1998.

⁷In the Matter of AT&T Communications v. MCI Telecommunications Corp., Memorandum Opinion and Order, 7 FCC Rcd 807, 809 (1992).

in NYNEX's region."⁸ In this proceeding, however, the competitive conditions alleged by Ameritech are broadly similar to those existing in other larger metropolitan areas. Indeed, Ameritech's petition is almost identical to forbearance petitions that have been filed by SBC, U S West, and Bell Atlantic. Immediate denial of Ameritech's petition -- and the similar petitions filed by other ILECs -- will serve the public interest by allowing the Commission to focus its resources on CC Docket No. 96-262.

III. Ameritech's Reclassification of its Intrastate Services as "Competitive" Does Not Demonstrate that Competition in the Interstate Special Access Market is Sufficient to Justify the Relief that Ameritech Seeks

Ameritech's reclassification of intrastate high-capacity services in Illinois as "competitive" provides no evidence of declining market power in the interstate high-capacity market and, contrary to Ameritech's suggestion,⁹ does not show that interstate high-capacity services should be given the same regulatory treatment as intrastate high-capacity services. As an initial matter, the Commission's regulatory approach to high-capacity services is of far greater significance to high-capacity customers and to the development of competition in the high-capacity special access and transport markets than the framework used by state regulators. The intrastate private line market is much smaller than the interstate special access market; in Illinois, for example, Ameritech's intrastate private line revenues are only one-seventh Ameritech's interstate special

⁸In the Matter of NYNEX Telephone Companies Petition for Waiver, Memorandum Opinion and Order, 10 FCC Rcd 7445, 7455 (1995).

⁹Petition at 8.

access revenues.¹⁰ Given that the intrastate high-capacity market is so much smaller than the interstate market, and given the fact that the intrastate high-capacity services are rarely purchased by IXCs, state-level regulatory frameworks for these services do not provide any guidance as to the approach the Commission should adopt for interstate services.

Moreover, Ameritech's decision to reclassify its intrastate high-capacity services as "competitive" provides no evidence of the level of competition in the high-capacity market in the Chicago LATA. Under Illinois law, the reclassification to "competitive" status is self-initiated: ILECs reclassify a service to competitive simply by making a tariff filing in which the service is declared to be competitive. Ameritech's reclassification of its intrastate special access and private line services should not be viewed as a finding by the Illinois Commerce Commission (ICC) that these services are in fact competitive.

Indeed, recent actions by the ICC cast doubt on Ameritech's claim that its intrastate high-capacity services are competitive. In a November, 1998, report, ICC staff recommended the ICC begin an investigation into competitive reclassifications made by Ameritech in 1998.¹¹ Although the ICC will not, at this time, investigate Ameritech's reclassification of private line and special access services, this is simply because the ICC

¹⁰For Illinois, Ameritech reported 1997 local private line revenue of \$24,365,000 and interstate special access revenue of \$166,606,000. Ameritech-Illinois 1997 ARMIS 43-02 Report, Table I1, Rows 5040, 5083.

¹¹MCI WorldCom is providing the ICC staff report as Attachment A and the ICC orders initiating the investigations as Attachment B.

does not have sufficient resources to investigate all eleven of Ameritech's reclassification filings. The ICC has decided to focus its resources on the two services that are most essential for state ratepayers: business and residential network access line and usage services.¹²

This is not the first time that the ICC has found it necessary to examine Ameritech's competition claims. In October, 1995, the ICC found that all of the services that Ameritech had reclassified as competitive up to that time should properly be classified as noncompetitive.¹³ The ICC ordered Ameritech to roll back its price increases and refund amounts charged in excess of the previous rates.

Thus, Ameritech's discussion of private line and special access regulation in Illinois provides no support for its claims in this proceeding. While Ameritech may be offering these services pursuant to streamlined regulation at the state level, this reflects nothing more than a self-initiated reclassification. The ICC has in no way endorsed Ameritech's competition claims; indeed, the ICC staff report and the ICC's recently-initiated investigation cast considerable doubt on any claims that Ameritech makes regarding the level of competition in the Chicago LATA or elsewhere in Illinois.

IV. The Commission's Dominant Carrier Rules Remain Necessary

If the Commission does not deny Ameritech's petition immediately on public interest grounds, but proceeds instead to conduct a full-scale forbearance analysis, such

¹²ICC Staff Report at 1-2.

¹³Id. at 2-5.

an analysis would show that Ameritech's petition fails to satisfy Section 10's three-part test. In particular, this analysis would show that the Commission's dominant carrier rules remain necessary to ensure that Ameritech's special access rates and practices are just, reasonable, and not unreasonably discriminatory, and that Ameritech's petition therefore fails to satisfy the Section 10(a)(1) and 10(a)(2) criteria.

A. Ameritech Continues to Possess Market Power

According to Commission precedent, the price cap and dominant carrier tariffing regulations can be eliminated (in the case of price cap regulation) or replaced by less onerous regulation (in the case of tariffing) if a carrier is "non-dominant" (i.e., does not have market power in the relevant market).¹⁴ In determining whether a carrier has market power, the Commission looks at such factors as demand elasticity, supply elasticity, the incumbent's pricing behavior, market share, and differences in cost structures. When these factors are evaluated with reference to high capacity services in the Chicago LATA, it is clear that Ameritech continues to possess market power.

1. Supply Elasticity

A key issue in the Commission's market power assessment is whether supply is sufficiently elastic to constrain Ameritech's unilateral pricing decisions in the provision of high-capacity services, i.e., whether competitors have or could quickly acquire the

¹⁴In the Matter of Motion of AT&T Corp to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271 (1995) (AT&T Reclassification Order); Comsat Order.

capacity to take away enough business from Ameritech to make unilateral price increases by Ameritech unprofitable.¹⁵

In its petition, Ameritech argues that there is high supply elasticity because “[c]ompetitors have extended their facilities nearly ubiquitously throughout the areas where demand for high capacity services exist.”¹⁶ The reality, however, is that customers have no competitive alternatives to Ameritech on the vast majority of the high capacity routes in the Chicago LATA. CAP networks extend to at most a few hundred buildings in the Chicago LATA; while Ameritech does not provide any data that would allow these CAP building counts to be compared to the total number of high-capacity special access locations in the Chicago LATA, MCI WorldCom estimates that no more than 5 percent of the high-capacity special access locations in the Chicago LATA are connected to a competitor’s network.¹⁷

The CAP facilities in the Chicago LATA generally provide a competitive alternative for only limited segments of special access circuits. Typically, MCI WorldCom uses competitive facilities for only the POP-to-serving wire center (SWC) portion of a circuit; Ameritech continues to provide the much more significant (in

¹⁵See AT&T Reclassification Order, 11 FCC Rcd at 3303.

¹⁶Petition at iv.

¹⁷Data provided with U S West’s Phoenix forbearance petition indicated that less than 6 percent of the “high capacity” locations in the Phoenix MSA were on CAP networks. See MCI WorldCom Opposition, CC Docket No. 98-157, October 7, 1998, at 11. Given that Ameritech’s petition encompasses not just the downtown core of Chicago, but also the suburban and rural areas of the Chicago LATA, it is highly unlikely that more than 5 percent of the high-capacity special access locations in Chicago LATA are on a CAP network.

revenue terms) interoffice mileage, multiplexing, and customer channel termination elements. Even in the limited number of cases where a CAP has built out its network to an Ameritech end office, Ameritech continues to provide the bottleneck multiplexing¹⁸ and end user channel termination rate elements. Absent price cap regulation, Ameritech's continuing bottleneck control of the multiplexing and end user channel termination elements would allow it to raise the prices of these elements (and, consequently, for the circuit as a whole) to supracompetitive levels, even in cases when CAP facilities can be used for the POP-to-SWC or POP-to-end office segment.

Recognizing that CAP facilities are connected to only a limited number of buildings, Ameritech attempts to argue that existing CAP fiber routes can easily be extended to additional buildings. For example, it attaches great weight to the claim that "competitors' facilities are already located in wire centers representing more than 87 percent of Ameritech's high capacity revenues and more than 94 percent of its [DS1-equivalent] special access Local Distribution Channels (LDCs)."¹⁹

These statistics fail to show that competitors can "quickly acquire" capacity on the special access routes they do not currently serve. First, the fact that CAP fiber may traverse a portion of a wire center serving area says nothing about the extent of

¹⁸Typically, CAPs cross-connect to Ameritech facilities at the DS3 level; MCI WorldCom must then obtain DS3/DS1 multiplexing from Ameritech in order to provide T1 special access service to end users. CAPs do not offer multiplexing services because the installation of multiplexing equipment and associated cross-connect frames in collocation cages would consume too much floor space to be practical under existing collocation space restrictions.

¹⁹Petition at 20.

competitive supply for high-capacity end users in that wire center. Contrary to Ameritech's claim that "[i]n wire center serving areas traversed by competitive fiber, it is reasonable to assume that Ameritech's high capacity revenues in that wire center are addressable within a short period of time by the competitor,"²⁰ building out from existing fiber routes to currently-unserved buildings is a capital-intensive and time-consuming process. MCI WorldCom and others have previously shown that the Bell Atlantic and U S West buildout cost estimates, upon which Ameritech relies in its petition,²¹ are unrealistically low.²²

Second, Ameritech's "DS1 equivalent LDC" statistic is an unreliable measure of the scope of competitive network buildout. The term "Local Distribution Channel," as it is used in Ameritech's interstate special access tariff, refers to both the POP-SWC segment of a special access circuit and the end office-to-end user premises segment.²³ These two types of LDCs differ significantly in key respects. POP-SWC LDCs are typically very high capacity DS3 or SONET facilities, while end office-to-end user LDCs are usually DS1 or, less commonly, DS3 facilities. Also, the level of competitive supply for the two kinds of LDCs differs substantially: while there is some competitive

²⁰Aron Report at 28.

²¹Id. at 28-29.

²²See MCI WorldCom Opposition at 8, CC Docket No. 99-24, March 18, 1999.

²³See Aron Report at 32. Other ILECs generally refer to these elements as "channel terminations."

supply for the IXC POP-to-serving wire center LDCs, competitive supply for end office-to-end user premises LDCs is almost nonexistent.

By combining the two types of LDCs into a single “DS1 equivalent LDC” statistic, Ameritech is able to overstate the scope of competitive network buildout. The “DS1 equivalent LDC” statistic gives disproportionate weight to the small number of very high-capacity IXC POP-serving wire center LDCs -- which are more likely to be in “competitive” wire centers. This allows Ameritech to claim that a high percentage of LDCs are in “competitive” wire centers even if, as is the case, competitive alternatives for end office-to-end user premises LDCs are extremely limited.²⁴

In no respect is the supply elasticity for high-capacity services in the Chicago LATA comparable to the supply elasticity the Commission found in the AT&T or Comsat nondominance proceedings. In the AT&T nondominance proceeding, the record showed that AT&T’s competitors could immediately absorb 15 percent of AT&T’s total switched demand, could absorb one-third of AT&T’s capacity with existing equipment, and could absorb two-thirds of AT&T’s capacity within a year after investing only \$660 million.²⁵ By contrast, Ameritech’s competitors currently serve only a fraction of Ameritech’s high capacity locations, can absorb zero demand on most routes, can provide service to additional locations only by constructing new facilities, and can

²⁴Ameritech’s claim that 87 percent of high-capacity revenues are in “competitive” wire centers is difficult to evaluate without knowing how Ameritech apportioned the revenues associated with circuits that connect a location in a “competitive” wire center with a location in a “non-competitive” wire center.

²⁵AT&T Reclassification Order, 11 FCC Rcd at 3303.

address a significant fraction of Ameritech's high capacity market only by making investments that are prohibitive.

2. Demand Elasticity

While MCI WorldCom and other access customers are obviously eager to find alternatives to Ameritech's high capacity services, a finding of high demand elasticity requires that Ameritech's customers not only be willing to switch suppliers, but also that they have the ability to do so.²⁶ High-capacity customers in the Chicago LATA currently have only a limited ability to switch suppliers. First, as discussed above, alternative sources of supply are simply unavailable on every route. Second, even on the limited number of routes where there may be a competitive alternative, excessive termination liabilities, nonrecurring charges, and operational barriers restrict customers from switching suppliers.

Because Ameritech has "locked in" most of the installed base of high-capacity circuits with term plans and prohibitive nonrecurring charges, competitors are effectively competing only the "growth" market. Competitors are therefore limited in their ability to "prove in" additional routes, expand their networks, and develop economies of scale.

²⁶See, e.g., Comsat Order at ¶71 ("High firm demand elasticity indicates that customers are willing and have the ability to switch to another service provider in order to obtain price reductions or desired features.").

3. Ameritech's Pricing Behavior

The Commission has, in previous proceedings, examined the incumbent's pricing behavior to determine whether such pricing behavior was consistent with declining market power. In the AT&T nondominance proceeding, for example, the Commission noted that AT&T's Basket 1 API was 6.2 percent below the PCI.²⁷

Ameritech's recent pricing behavior is inconsistent with its claim of lost market power. The evidence shows that competitive forces are not constraining Ameritech's pricing in any way, and that the only pricing constraint is provided by the Commission's price cap mechanism. Currently, Ameritech is pricing its trunking basket services within 0.2 percent of the maximum permitted by the price cap rules.²⁸ And, during the last two years, when the Commission's rules required Ameritech to target all X-Factor reductions to the Transport Interconnection Charge (TIC),²⁹ and none to the High-Cap service categories, Ameritech actually increased its interstate DS1 and DS3 rates at a time when the cost of providing these services was declining.³⁰ The increase in DS1

²⁷AT&T Reclassification Order, 11 FCC Rcd at 3314.

²⁸Ameritech's current trunking basket API of 59.8939 is 0.2 percent below the trunking basket PCI of 60.0353. Ameritech Transmittal No. 1200, TRP, Chart IND-1, line 520, cols. (A), (B).

²⁹47 C.F.R. §61.47(I).

³⁰Comparison of 6/30/97 and Current Ameritech DS1 and DS3 SBIs:

	<u>6/30/97 SBI</u>	<u>Current SBI</u>
DS1 Sub-Cat	74.3389	89.5460
DS3 Sub-Cat	67.3584	69.9853

rates has been especially significant.³¹ Even in the supposedly more competitive Zones 1 and 2 in Illinois, most of Ameritech's high-capacity rates are the same as they were three years ago, particularly for the bottleneck channel termination and multiplexing elements.³²

Ameritech's ability to maintain or increase its high-capacity rates, during a period when the cost of providing special access services has been declining,³³ provides convincing evidence of continued market power. Ameritech's rates go down only when forced down by the price cap mechanism; competitive supply is clearly insufficient to play any role in constraining Ameritech's pricing, particularly for DS1 circuits and bottleneck multiplexing and channel termination elements.

³¹Id.

³² Ameritech-Illinois interstate special access rates:

<u>Zone 1</u>	<u>6/30/96</u>	<u>Current</u>
DS1 chan term	\$112.50	\$112.50
DS1 mileage-fixed	\$42.51	\$24.80
DS1 mileage-variable	\$13.84	\$13.84
DS3/DS1 mux	\$508.80	\$508.80
 <u>Zone 2</u>	 <u>6/30/96</u>	 <u>Current</u>
DS1 chan term	\$116.25	\$115.80
DS1 mileage-fixed	\$42.51	\$24.80
DS1 mileage-variable	\$13.84	\$13.84
DS3/DS1 mux	\$508.80	\$508.80

³³The growing use of HDSL technology is reducing the cost of provisioning DS1 circuits. See Fiber Deployment Update - End of Year 1997, Industry Analysis Division, at 20; Table 8.

4. Market Share

a. Ameritech's "Retail Market Share" Statistic is Meaningless

Ameritech contends that "retail market share" is the "most important market share statistic."³⁴ The "retail market" to which Ameritech refers apparently consists of high-capacity services ordered by end users, both those services ordered directly from Ameritech or a CAP and those ordered from an IXC. According to Ameritech, "competitors" have "captured" 94 percent of this retail market (i.e., 94 percent of high-capacity services are ordered from an IXC or a CAP, rather than directly from Ameritech.)³⁵

Ameritech's "retail market share" figure is meaningless. Most of the 94 percent market share that Ameritech attributes to "competitors" consists of Ameritech circuits that end users have ordered from IXCs (rather than directly from Ameritech).³⁶ There is nothing remarkable about the fact that only 6 percent of DS1 equivalent circuits are ordered directly from Ameritech. It has always been true that most ILEC special access

³⁴Petition at 14.

³⁵Id. Ameritech does not indicate the source of this market share figure. The text of the petition refers to the Aron Report as the source, but the Aron Report states simply that the data was "provided by Ameritech." Aron Report at 2 n.1, 19 n.52.

³⁶MCI WorldCom estimates that Ameritech circuits ordered from IXCs, rather than directly from Ameritech, represent approximately 88.9 percent of Ameritech's interstate special access revenues. Ameritech's most recent TRP shows approximately \$623 million in annual "High Cap & DDS" revenues (Transmittal No. 1200, SUM-1, line 200); in the same transmittal, Ameritech shows \$34.7 million in "end user" high-capacity revenues for the first six months of 1998 (i.e., \$69.4 million on an annualized basis) (Transmittal No. 1200, Exhibit 1, "Allocation of Trunking Adjustment", col. (a), sum of "DS1/LT1" and "Other High Cap" lines).

circuits are ordered from the IXC, rather than directly from the ILEC. Ameritech gives no indication of how its retail market share has changed over the last five or ten years, but it is likely that end users have never ordered more than ten or fifteen percent of their special access needs directly from Ameritech. In fact, according to Ameritech's logic, it had "lost" most of the market for high-capacity services even before a single CAP network was built in the Chicago LATA.

Ameritech contends that the practice of ordering special access circuits from the IXC rather than directly from the ILEC is an example of "competitive resale."³⁷ But IXCs' role in providing high-capacity special access circuits is not comparable to the role that resellers play in the interexchange and wireless markets. The IXC is, in most respects, simply performing a coordination function for the end user. Most customers look to the IXC to provision an end-to-end arrangement since the transaction costs associated with obtaining access and long distance separately are not insubstantial.

The fact that the end user may order an Ameritech circuit from an IXC does not transform the IXC into a competitor in the special access market or demonstrate a decline in Ameritech's market power. In contrast to the situation in the interexchange and wireless markets, IXCs are not generally applying pricing pressure in the retail market by reselling high-volume "wholesale" services. In fact, the difference between Ameritech's high-volume rates and retail (i.e., low volume) rates is modest, limited mainly to the per-circuit price differential between different transmission technologies

³⁷U S West Petition at 20.

(e.g., the per-DS1 cost of a DS3 is less than the cost of a standalone DS1).³⁸ As a practical matter, then, the IXC “reseller” has almost no impact on the pricing of “retail” special access services. The Commission has never found the longstanding practice of ordering special access circuits from IXCs to be of any competitive significance, and should not do so now.

b. Ameritech’s Other Market Share Statistics are Based on the Flawed Quality Strategies Study

Next, Ameritech argues that “competitors’ share of special access local distribution channels (LDCs) had increased to almost 49 percent as of a year ago.”³⁹ This statistic is based on a market share “study” conducted by Quality Strategies, Inc. for Ameritech. According to this Ameritech-sponsored study, competitors provide 66 percent of DS1 LDCs and 43 percent of DS3 LDCs; the DS1 LDC and DS3 LDC market share statistics combine to yield the claimed “DS1 equivalent” competitor market share of 49 percent.⁴⁰

The Quality Strategies report is riddled with methodological errors. First, LDC market share data based on end user customer surveys⁴¹ is likely to be unreliable. While

³⁸The only access element for which Ameritech offers a volume discount other than the per-circuit price differentials between different transmission capacities (DS1 vs. DS3 vs. SNET) is the entrance facility (or, in the case of special access, the IXC POP-SWC LDC). No volume discounts are available for interoffice mileage, multiplexing, or channel terminations.

³⁹Petition at 15.

⁴⁰Quality Strategies, Ameritech Chicago HiCap Track, First Quarter 1998, at 9-11.

⁴¹*Id.* at 5 (“Quality Strategies uses its standard HICAP survey to collect information from business customers in each geographic area.”)

the end user customer knows the carrier from which the special access circuit was ordered, the end user customer may not know which carrier is the actual provider of the underlying LDC. In fact, Ameritech states elsewhere in its petition that “the end user customer may not even be aware of the identity of the carrier actually provisioning the underlying high capacity facilities.”⁴² Given that CAPs commonly offer special access services by combining their facilities with ILEC-provided LDCs, it is likely that the surveyed end users will (inaccurately) report the CAP as the provider of the LDC. MCI WorldCom notes that Quality Strategies attributes a very high DS1 LDC market share to MFS;⁴³ MFS often provides its DS1 local private line and special access services using Ameritech channel terminations.

Second, the Commission should recognize that the Quality Strategies report’s focus on LDC market share is designed to overstate competitors’ market share gains. As discussed above, an LDC can be either the POP-SWC portion of a circuit or the end office-end user portion of a circuit. POP-SWC LDCs are typically high-capacity facilities; in fact, POP-SWC LDCs probably account for the vast majority of DS3 LDCs that Ameritech sells. Thus, the DS3 LDC market share losses reported by Quality Strategies, even if accurate, would reflect nothing more than the fact that CAPs may be a competitive source of supply for some POP-SWC connections. The resulting “DS1 equivalent” market share measure would be heavily weighted by the large number of DS1 equivalents attributable to these POP-SWC DS3 LDCs, and would obscure the fact

⁴²Petition at 14.

⁴³Quality Strategies, Ameritech Chicago HICAP Track, First Quarter 1998, at 8.

that Ameritech is continuing to provide the more significant (in revenue terms) interoffice facilities, multiplexing, and channel terminations (i.e., end office-end user LDCs).

Because of the distortions and errors introduced by the Quality Strategies methodology, the Commission should attach no weight to the market share data reported by Ameritech. This market share data is certainly inconsistent with MCI WorldCom's experience as the second-largest customer of interstate special access services. Ameritech facilities continue to represent over 80 percent of MCI WorldCom's high-capacity costs in the Chicago LATA, reflecting the fact that Ameritech continues to provide the vast majority of MCI WorldCom's interoffice transport, multiplexing, and channel terminations. At this level, Ameritech's market share is clearly inconsistent with its claim of lost market power. In the AT&T Reclassification Order, the Commission found that AT&T's market share had fallen to 55.2 percent in terms of revenues and 58.6 percent in terms of minutes.⁴⁴

Similarly, the Commission should attach no weight to the Quality Strategies data suggesting that CAPs are winning a majority share of new growth circuits.⁴⁵ This

⁴⁴AT&T Reclassification Order, 11 FCC Rcd at 3307. MCI WorldCom is not suggesting that 55.2 percent is an appropriate indicator of reduced market power in the access market. The Commission recognized in the AT&T Reclassification Order that a 55 percent market share was "not incompatible" with a competitive market only "in markets with high supply and demand elasticity." AT&T Reclassification Order, 6 FCC Rcd at 5890 ¶51. Given the highly route-specific nature of competitive alternatives in the access market, and the correspondingly inelastic supply, a 55.2 percent market share figure would be an indicator of continued ILEC dominance of the access market.

⁴⁵Ameritech Petition at 16; Quality Strategies 1Q98 report at 12.

claim -- that, starting in 1997, CAPs were winning a majority share of the special access market growth -- is inconsistent with available data concerning Ameritech's special access business. It is highly unlikely that Ameritech would be able to report record growth in its interstate special access revenues in Illinois in 1997 -- 22 percent⁴⁶ -- at the same time that CAPs were winning a majority share of the market growth.

The data showing record growth in Ameritech-Illinois interstate special access revenues confirms Ameritech's continued market power. The record growth in revenues reflects, first, the fact that Ameritech has effectively locked in most of the embedded base of installed circuits -- CAPs cannot realistically hope to take away more than a fraction of Ameritech's existing business. The record growth in revenues also reflects the fact that, even for growth circuits, Ameritech is still the only source of supply on most routes. And, finally, the record growth in revenues reflects the fact that there has been no downward pricing pressure on Ameritech's special access rates for the last three years, either from competitive supply or from the Commission's price cap mechanism.

⁴⁶Ameritech-Illinois interstate special access revenue:

<u>Year</u>	<u>Revenue</u>	<u>Growth</u>
1990	\$133.6	
1991	\$120.5	-9.8%
1992	\$118.6	-1.6%
1993	\$106.1	-10.5%
1994	\$109.6	3.2%
1995	\$120.1	9.6%
1996	\$136.7	13.8%
1997	\$166.7	21.9%

Source: ARMIS 43-02, Table I1, row 5083.

5. Cost Structure, Size and Resources

As the incumbent provider of special access services, Ameritech enjoys several cost advantages. First, as the Commission has observed, CAPs are attempting to enter a market that is dominated by the incumbent provider, and may not have attracted a sufficient amount of business to achieve economies of scale.⁴⁷

Second, one of the most important factors inhibiting CAPs from expanding their networks to serve additional buildings is the refusal of most landlords to allow CAPs to provide service in their building without payment of compensation — compensation that is almost never demanded from the ILEC. This places CAPs at a competitive disadvantage in terms of the cost of providing service. Furthermore, the CAPs must make a difficult decision regarding the allocation of scarce capital. Ideally, given the necessity of paying building owners, the CAP would prefer to make the commitment to enter a building only after obtaining contracts to provide service to customers in that building. But given that the process of obtaining authority to enter a building after signing up a new contract may take months, CAPs may risk capital by committing to certain buildings prior to having a signed customer contract. Others will wait for the customer contract, but the resulting lengthy time for delivery of service will make the sales efforts more difficult.

⁴⁷In the Matter of Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Order Concluding Investigation and Denying Application for Review, 12 FCC Rcd 19311, 19337 (1997) (SWBT RFP Tariff Rejection Order).

B. Dominant Carrier Regulation is Necessary to Ensure that Ameritech's High Capacity Rates and Practices are Just, Reasonable, and Not Unreasonably Discriminatory

In order to satisfy the first statutory criterion of Section 10, Ameritech is required to demonstrate that application of the Commission's price cap, tariffing, and rate averaging rules is not necessary to ensure that its rates and practices are just, reasonable, and not unreasonably discriminatory. Because, as discussed above, Ameritech continues to possess market power in the provision of high-capacity services in the Chicago LATA, the Commission should conclude that Ameritech has failed to satisfy the Section 10(a)(1) criterion. The Commission has previously found that its price cap rules (or other forms of rate regulation) and dominant carrier tariff rules are necessary as long as a carrier possesses market power.⁴⁸

It is clear that the Commission's price cap and tariff rules remain necessary to ensure that Ameritech's rates are just and reasonable. Because there are no competitive alternatives on the vast majority of high-capacity routes in the Chicago LATA, Ameritech has the ability and incentive to charge rates that are not just and reasonable on these routes. Ameritech's continued at-cap pricing and pattern of reducing its high-capacity rates only when forced to do so by the price cap mechanism demonstrates that the Commission's price cap is the only constraint on Ameritech's pricing of special

⁴⁸Comsat Order at ¶144.

access services. To prevent Ameritech from overcharging access customers, the Commission must continue to apply its price cap rules.⁴⁹

The Commission must also continue to apply its dominant carrier tariff rules. The tariff rules' advance notice and cost support requirements permit Ameritech customers and the Commission to challenge potentially unlawful rates before they become effective.⁵⁰

Similarly, the rate averaging requirements remain necessary to ensure that Ameritech's rates for high capacity services in the Chicago LATA are not unreasonably discriminatory. Absent the rate averaging requirement, Ameritech could offer rates on routes that are subject to competition that are not generally available to similarly situated customers on routes not subject to competition. The Commission has previously found that such practices are unreasonably discriminatory in violation of Section 202(a) of the Act.⁵¹

C. Dominant Carrier Regulation is Necessary for the Protection of Consumers

In order to satisfy the second statutory criterion of Section 10, Ameritech must demonstrate that application of the Commission's price cap, tariffing, and rate averaging rules is not necessary for the protection of consumers. Because the record shows that,

⁴⁹In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6787 (1990).

⁵⁰Comsat Order at ¶153.

⁵¹In the Matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd 6964, 6965 (1998).

absent regulation, Ameritech would have the ability and incentive to charge access rates that are not just and reasonable or are unreasonably discriminatory, and thus increase prices and distort competition in the interexchange market, the Commission's dominant carrier regulations remain necessary for the protection of consumers.

V. Conclusion

The Commission should act immediately to deny Ameritech's petition for forbearance on the grounds that the LATA-specific relief that Ameritech seeks would be contrary to the public interest and thus fails to satisfy the Section 10(a)(3) public interest criterion. If the Commission proceeds instead to conduct a full-scale forbearance analysis, then it should find that Ameritech continues to possess market power in the Chicago LATA and that the Commission's dominant carrier rules are necessary to ensure that Ameritech's high-capacity special access rates and practices are just, reasonable, and not unreasonably discriminatory.

Respectfully submitted,
MCI WORLDCOM, INC.



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March 31, 1999

Attachment A: ICC Staff Report

Meeting date: November 30, 1998

TELECOMMUNICATIONS DIVISION STAFF REPORT

November 25, 1998

SUBJECT: Staff recommends that the Commission initiate a proceeding to:

- (1) Investigate Ameritech Illinois' competitive reclassification of its business and residential telecommunications services listed in TRM #s 120 and 309;
- (2) Determine whether or not the retail rate increases that occurred following the competitive reclassification of the services listed in TRM #s 120 and 309 are appropriate, and if not, what, if any, refunds should be made to end users;
- (3) Determine whether or not the wholesale rate increases that occurred following the competitive reclassification of the services listed in TRM #s 120 and 309 are appropriate, and if not, what, if any, refunds should be made to wholesale carriers;
- (4) Establish filing requirements that Ameritech Illinois must satisfy when reclassifying its services as competitive.

Capsule Summary

In its Order in Dockets 95-0135 and 95-0179, the Commission specified the evidence required of Ameritech Illinois to support the competitive reclassification of a telecommunications service. Based on its review of the documentation filed by Ameritech Illinois to support the competitive reclassification of the services listed in the "Details of Filing" portion of this report, Staff cannot conclude that Ameritech Illinois has satisfied the standards set forth in the Commission's Order in Dockets 95-0135/95-0179, Consolidated. Further, Staff cannot conclude that those services are appropriately reclassified as competitive. A detailed discussion of the requirements set forth in the Commission's Order as well as the content of Ameritech Illinois' filings is presented below.

For the reasons discussed below, it is the recommendation of the Staff of the Telecommunications Division that the Commission initiate a proceeding to:

- (1) Investigate Ameritech Illinois' competitive reclassification of its business and residential telecommunications services. However,

because of the large number of services reclassified as competitive, and the Commission's limited resources, Staff recommends that a proceeding be initiated to investigate only two of the eleven competitive reclassification filings at this time. Specifically, the Commission should investigate the competitive reclassification filings set forth in TRM #s 120 and 309.

(2) Determine whether or not the retail rate increases that occurred following the competitive reclassification of the services listed in TRM #s 120 and 309 are appropriate, and if not, what, if any, refunds should be made to end users; and

(3) Determine whether or not the wholesale rate increases that occurred following the competitive reclassification of the services listed in TRM #s 120 and 309 are appropriate, and if not, what, if any, refunds should be made to wholesale carriers;

(4) Establish filing requirements that Ameritech Illinois must satisfy when reclassifying its services as competitive. These filing requirements should be consistent with the evidence requirements set forth in the Commission's Order in Dockets 95-0135/0179, Consolidated.

Background

In January of 1995, Ameritech reclassified certain services it provided to business customers from noncompetitive to competitive pursuant to Section 13-502(b) of the Illinois Public Utilities Act ("PUA"). These services included band B calls, band C calls, credit card calls, and operator assistance services. In April of 1995, Ameritech filed to raise those rates for band C usage and calling card calls. Staff prepared a report expressing concern regarding Ameritech Illinois' actions and recommended that these filings be investigated. Also in April of 1995, the Commission entered Orders initiating Dockets 95-0135 and 95-0179 to investigate Ameritech Illinois' competitive reclassification of business bands B and C calls, credit card calls and operator assistance services and the subsequent rate increases. Dockets 95-0135 and 95-0179 were then consolidated.

In its Order in Dockets 95-0135/95-0197, Consolidated, the Commission relied on the standards set forth in Section 13-502(b) of the PUA, as well as the intent of the General Assembly in enacting the Universal Telephone Service Protection Law of 1985 that brought about Section 13-502(b), to reach a determination as to whether or not Ameritech Illinois' competitive reclassification of the services listed above was appropriate. Section 13-502(b) of the PUA states that:

A service shall be classified as competitive only if, and only to the extent that, for some identifiable class or group of customers in an exchange, group of exchanges, or some other clearly defined geographical area, such service, or its functional equivalent, or a substitute service, is reasonably available from more than one provider, whether or not any such provider is a telecommunications carrier subject to regulation under this Act. (220 ILCS 5/13-502(b)).

Further, in its Order in Dockets 95-0135/95-0197, Consolidated, the Commission stated that in making a decision in a reclassification proceeding under Section 13-502(b), the Commission would consider three basic issues:

- (1) The functional equivalence of alternative services; or
- (2) the substitutability of alternative services; and
- (3) the reasonable availability of those functional equivalent or substitute services.

The Commission further stated that the functional equivalence or substitutability of a service is not sufficient to warrant the competitive reclassification of a service if the evidence indicates that the service is not reasonably available to consumers in the actual operation of the marketplace. (Docket 95-0135/0179 Order at 24). The Commission also stated that:

In differentiating between competitive and non-competitive markets, this Commission must make the determination concerning not only the asserted availability of the service, but the ease and economic self-interest which will induce customers to switch between suppliers. It is the capability of customers to exercise economic choices between suppliers that defines in significant part a genuinely competitive market and the reasonable availability of alternative services. (Docket 95-0135/0179 Order at 29).

Finally, the Commission stated that:

Competitive classification under Section 13-502 requires a convincing demonstration that competition will in fact serve effectively as a market-regulator of the quality, variety and price of telecommunications services. Ameritech Illinois' ability to increase its prices notwithstanding the presence of other providers is a strong indication that those rates are not just and reasonable, and that the competitive classification here fails to satisfy this statutory policy. The evidence indicates rather that the declaration of competition in this case is being used as a device to raise rates to customers which demonstrably have not found the alternative offerings by other carriers to be the functional equivalents or reasonably available substitutes for Ameritech Illinois' service.

Based on this analytical framework, the Commission concluded that Ameritech Illinois' business bands B and C calls were not appropriately reclassified as competitive. The Commission concluded that the differences in the methods of accessing the competing bands B and C services which necessitated dialing around Ameritech Illinois by the use of 800 or 10XXX dialing arrangements to reach an alternative provider did not allow the IXCs' services to be functionally equivalent to or a substitute for Ameritech Illinois' reclassified services. Further, because Ameritech held 86.6% of the market share, the Commission found that the IXCs' services were not reasonably available to Ameritech's customers.

With regard to the operator assistance and calling card services, the Commission found that IXCs had a greater market share than they did in the market for bands B and C services. However, the Commission noted that the data regarding the competitive nature of this service were of recent origin and did not conclusively show an assured and effective competitive structure. The Commission also noted that the dial around arrangements required to reach an alternative provider of operator assistance and calling card services prevented the Commission from concluding that services offered by alternative providers were functionally equivalent to or a substitute for those services offered by Ameritech Illinois. The Commission thus concluded that all of the services at issue in this proceeding should be classified as noncompetitive. The Commission further ordered Ameritech to roll back its price increases and refund amounts charged in excess of the previous rates.

Following the issuance of its Order on October 16, 1995, Ameritech Illinois filed a petition with the Commission seeking rehearing. The Commission denied Ameritech Illinois' petition for rehearing. Ameritech filed for a stay of the order on October 24, 1995, and the Commission denied Ameritech's request on October 30. On November 2, 1995, Ameritech requested a limited stay of the Commission Order. The Commission approved the Company's request for a limited stay on November 8, 1995. On November 9, 1995, the Ameritech filed tariffs, reclassifying the business services listed above as noncompetitive and rolling back prices. Consistent with the grant of the limited stay, business customers utilizing 12 lines or more did not receive refunds. The Docket was reopened in order to review evidence regarding business customers utilizing 12 lines or more. The record in the follow-on case was marked Heard and Taken on March 7, 1996. No proposed Order has been released to date in this follow-on Docket.

Ameritech Illinois appealed the Commission's first Order in Docket 95-0135/95-0179 to the Illinois Appellate Court. The Illinois Appellate Court filed an Opinion affirming the Commission's Order on July 22, 1996. On August 27, 1996 the Court denied rehearing of its decision. The Illinois Appellate Court found that:

Allowing a provider to classify a service as competitive prior to the development of a competitive market for the service would enable the provider to enjoy the benefits of a monopoly without the concomitant regulation which the legislature has declared is necessary to protect the interests of consumers. Accordingly, the Commission's conclusion that it must examine actual market behavior in order to determine whether a competing services is reasonably available was not clearly erroneous, and we defer to this interpretation.

Details of Filings

Between March of 1997 and NovemberJune of 1998, Ameritech Illinois filed twelveeleven tariff filings in which it reclassified several of its business and residential services as competitive. The tariff number and filing information is listed below.

TRM # 303

Filed: March 27, 1997

Effective: March 28, 1997

Declaring the following services as competitive for business customers with 12+ lines in Access Area A:

Service Transport Facilities

Flexline Service

DID Service

Digital Trunking Service

Custom Calling Services (Call Waiting, Call Forwarding, 3Way

Calling for business customers with 12+ lines; Speed Calling for all customers)

Number Retention Service

Private Directory Service

Semi-Private Directory Service

Custom Number Service

Additional Listings

PBX trunks

Business Direct Lines

Business Band A Usage

Competitors: MFS and Teleport

TRM # 991

Filed: October 14, 1997

Effective: October 15, 1997

Declaring local exchange services as competitive for business customers with 12+ lines in Access Area B and the following districts: Arlington Heights, Bensenville, Champaign Main, Champaign University, Decatur

Main, Decatur North, Deerfield, Downers Grove, Elk Grove, Elmhurst, Geneva, Glenview, Hinsdale, Lombard, Naperville, Northbrook, Springfield Lake, Springfield Main, Springfield West, Wheaton, and Wheeling. The services included in this competitive declaration include:

- Business Direct Lines
- Business Band A Usage
- PBX Trunks
- FlexLine
- DID Service
- Service Transport Facilities
- Digital Trunking
- Basic Custom Calling Features
- Number Retention Service
- Custom Number Service
- Additional Listings
- Private Directory Service
- Semi-Public Directory Service

Competitors: MFS, Teleport, MCIMetro, and Consolidated Communications Telecom Services, Inc.

TRM #120

Filed: February 6, 1998

Effective: February 7, 1998

Competitive declaration of the following local exchange services for business customers in Access Area C with 12+ lines and business customers in Access Areas A, B, and C with 11 or less lines:

- Business Direct Network Access Lines
- Business Band A and B Usage (11 or less lines)
- Business Band C Usage (12+ lines)
- Ameritech StraightRate
- Business Local CallPaks
- PBX Trunks
- FlexLine
- DID Service
- Service Transport Facilities
- Digital Trunking
- Basic Custom Calling Features (3Way Calling, Call Waiting, Call Forwarding)
- Advanced Custom Calling Features (Automatic Callback, Repeat Dialing, Distinctive Ringing, Call Screening, Caller ID, Caller ID with Name)
- Multi Ring Service
- Number Retention Service
- Custom Number Service
- Extra Listings

Private Directory Service (non-pub)
Semi-Private Directory Service (non-list)
Competitors: MFS, Teleport, McLeodUSA, MCIMetro, etc.

TRM #284

Filed: March 20, 1998
Effective: March 21, 1998

Competitive declaration of the following private line services in all access areas:

Telecommunications Channel Services (1001A, 1006, 2001, 2001A-E, 2002, 2301, 3002, 3010, 6000)

BTAS

DDS

Foreign District Service

Ameritech Base Rate Service

Ameritech 128, 256, and 384 Services

Ameritech DS1 Service

Ameritech DS3 Service

Ameritech OC-3, OC-12, OC-48, and OC-n Services

Ameritech ISDN PRI Service

Competitors: MFS, MCI Worldcom, Teleport, AT&T, etc.

TRM #308

Filed: March 30, 1998
Effective: March 31, 1998

Competitive declaration of the following Complementary Network Services and Central Office Features for business customers:

Busy Line Transfer

Alternate Answering

Customer Control Option

Message Waiting Tone

Easy Call

Special Delivery Feature

Automatic Delivery Feature

Ameritech FeatureLink Service

Remote Call Forwarding

Competitors: MFS, Teleport, MCIMetro, Winstar, etc.

TRM# 309

Filed: March 30, 1998
Effective: March 31, 1998

Competitive declaration of the following services for the exchanges of Alton, Belleville, Champaign Urbana, Collinsville, Danville, Decatur, East Moline, East St. Louis, Edgemont, Edwardsville,

Granite City, Moline, O'Fallon, Peoria, Qunicy, Rock Island, Rockford, Springfield, and Wood River:

Residence Network Access Lines
Residence Usage Services, Bands A and B
Custom Calling Services (3Way Calling, Call Waiting, Call Forwarding)
Advanced Custom Calling Services (Automatic Callback, Repeat Dialing, Distinctive Ringing, Call Screening, Caller ID, Caller ID with name, Automatic Callback, and Repeat Dialing)
Multi Ring Service

Competitors: Teleport, McLeodUSA, AT&T, etc.

TRM #496

Filed: May 14, 1998

Effective: May 15, 1998

Competitive declaration of Ameritech Integrated Services Digital Network (ISDN) Direct Service for all business customers in MSA 1.

Competitors: MFS, Teleport, Focal, Winstar, AT&T, etc.

TRM# 598

Filed: June 16, 1998

Effective: June 17, 1998

Competitive declaration of the following local exchange services for business customers:

Business Direct Network Access Lines
Business Usage Services
Ameritech StraightRate Service
Business Local CallPaks
PBX Trunks
FlexLine
DID Service
Service Transport Facilities
Basic Custom Calling Features (3Way Calling, Call Waiting, Call Forwarding)
Advanced Custom Calling Features (Automatic Callback, Repeat Dialing, Distinctive Ringing, Call Screening, Caller ID, Caller ID with Name)
Complementary Network Services (Busy Line Transfer, Alternate Answer, Customer Control Option, Message Waiting Tone, Easy Call, Special Delivery Feature, Automatic Delivery Feature)

Ameritech Feature Link Service
Ameritech ValueLink Extra-Select
Multi- Ring Service
Remote Call Forwarding
Number Retention Service
Custom Number Service
Alphabetical Directory Service
Extra Listings
Private Directory Service (non-pub)
Semi-Private Directory Service (non-list)
Competitors: AT&T, MFS, and Teleport

TRM #639

Filed: June 26, 1998

Effective: June 27, 1998

Competitive declaration of business Operator Assisted Bands A & B usage and associated Operator Assisted and Calling Card Surcharges (inadvertently omitted from Advice No. 5790).

Competitors: McLeodUSA, TCG, MFS, AT&T, MCI, LCI Frontier, etc.

TRM #654

Filed: June 29, 1998

Effective: June 30, 1998

Competitive declaration (and introduction) of Ameritech Frame Relay Service in Ameritech's service area.

Competitors: AT&T, MCIMetro, Sprint, Worldcom, MFS, etc.

TRM #962

Filed: September 21, 1998

Effective: September 22, 1998

Competitive declaration of Directory Assistance Call Service and Information Call Completion Service for Type I cellular customers.

Competitors: Metro One, InfoNXX, Excel, and Hebcom

TRM #1220

Filed: November 9, 1998

Effective: November 10, 1998

Competitive declaration of the following Special Access services to all customers in Access Areas A, B, and C:

1. Metallic Service,
2. Telegraph Grade Service,
3. Direct Analog Service,
4. Program Audio Service,
5. Video Service,
6. Direct Digital Service,

7. Ameritech Base Rate,
8. Ameritech 128, 256, and 384 Service,
9. Ameritech DS1 Service
10. Ameritech DS3 Service,
11. Ameritech OC-3, OC-12, and OC-48 Service, and
12. SONET Xpress Service.

Competitors: MFS, MCI WorldCom, Teleport Communications, AT&T, WinStar Communications, and Consolidated Communications.

After declaring some of the services listed above as competitive, Ameritech increased the retail and wholesale rates for those services. A partial list of retail and wholesale rate increases, to date, can be found in appendix 2 of this report.

Based on its experience with Dockets 95-0135/95-0197, Consolidated, Ameritech Illinois should be well aware of the Commission's requirements for determining whether a particular service satisfies the competitive reclassification standards set forth in Section 13-502(b) of the PUA as interpreted by the Commission. However, in the support material accompanying the reclassification of the services listed above, it is questionable whether Ameritech Illinois provided sufficient evidence to demonstrate that these services are competitive. Specifically, Ameritech provided a one or two page verified statement for each filing, listing possible competitors for the services in its filings. However, Ameritech did not provide any information regarding its market share for each reclassified service; the trend of its market share for the reclassified service; specific examples of services that compete with Ameritech's service; whether there are any functional differences in the Ameritech's service and that of a competitor, an explanation of the functional differences between those services to the extent they exist; or an analysis of the impact on demand of any price increase associated with the reclassification.

Without this information, Staff has no basis upon which to conclude that Ameritech Illinois' competitive reclassification of those services is consistent with Section 13-502(b) and the Commission's Order in Dockets 95-0135/95-0197, Consolidated. Further, Staff has no basis to conclude that Ameritech Illinois' wholesale and retail rate increases for those services are just and reasonable.

As stated above, Staff is recommending that the Commission begin its investigation of these competitive reclassifications by examining TRM #s 120 and 309 and their associated wholesale and retail rate increases. This will allow the Commission to examine the competitiveness of some of Ameritech Illinois' most essential and non-discretionary services; namely business and residential network access line and usage services.

Further, Staff is recommending that the Commission establish filing requirements that Ameritech Illinois must satisfy when reclassifying its services as competitive. This will eliminate most questions regarding the amount and substance of evidence needed from Ameritech Illinois to support its competitive reclassification of a non-competitive service.

Policy Implications

In addition to the question regarding whether or not Ameritech Illinois has met the requirements set forth by the Commission's Order in Dockets 95-0135/95-0197, Consolidated, Ameritech Illinois' reclassification of the above mentioned services raises issues of first impression that the Commission should decide. Specifically, Ameritech Illinois bases its competitive reclassification of some services on the presence of potential competition from providers offering service through the use of Ameritech Illinois' wholesale services or unbundled network elements. The Commission must determine to what extent services provided through wholesale or unbundled network elements are functionally equivalent, reasonably substitutable, and reasonably available in comparison to their Ameritech retail counterparts. Further, the Commission must determine whether or not the intervals at which Ameritech Illinois provisions those wholesale services or unbundled network elements to carriers allows those carriers to offer retail service that is functionally equivalent, reasonably substitutable and reasonably available. Finally, the Commission must determine whether or not retail service obtained from a carrier offering service through wholesale or unbundled network elements satisfies Section 13-502(b)'s requirement that the customer receive service from "more than one provider."

Recommendation

For the reasons set forth herein, Staff recommends that the Commission initiate a proceeding to:

- (1) Investigate Ameritech Illinois' competitive reclassification of its business and residential telecommunications services listed in TRM #s 120 and 309;
- (2) Determine whether or not the retail rate increases that occurred following the competitive reclassification of the services listed in TRM #s 120 and 309 are appropriate, and if not, what, if any, refunds should be made to end users;
- (3) Determine whether or not the wholesale rate increases that occurred following the competitive reclassification of the services listed in TRM #s 120 and 309 are appropriate, and if not, what, if any, refunds should be made to wholesale carriers;

(4) Establish filing requirements that Ameritech Illinois must satisfy when reclassifying its services as competitive.

Prepared by:

**Christopher L. Graves
Economic Analyst**

Reviewed by:

**Rasha Toppozada-Yow
Chief Policy Section**

Approved by:

**Patrick McLarney, Manager
Telecommunications Division**

Attachment 2

Tariff Filing	Service	Price when service was Reclassified as Competitive by TRM #120 (2/6/98)	Price after changes proposed in TRM #352 on 4/3/98	Price after changes proposed in TRM #817 on 8/7/98	Percentage change
Business Usage Service Access Area A, B, and C					
	Business Usage Service- Band A (Peak- initial)	\$0.0365	\$0.0365	\$0.0400	9.59%
	Business Usage Service- Band B (Peak- initial)	\$0.0745	\$0.0745	\$0.0800	7.38%
	Business Usage Service- Band C (Peak- initial)	\$0.1200	\$0.1050	\$0.1050	-12.50%
	Business Usage Service- Band A (Peak- addl)	\$0.0094	\$0.0094	\$0.0150	59.57%
	Business Usage Service- Band B (Peak-addl)	\$0.0215	\$0.0215	\$0.0300	39.53%
	Business Usage Service- Band C (Peak- addl)	\$0.0956	\$0.1050	\$0.1050	9.83%
		10% discount off peak rate N/A for Band C	10% discount off peak rate N/A for Band C	N/A	
	Shoulded Peak Charge				-10.00%
		40% discount off peak rate	40% discount off peak rate N/A for Band C	N/A	
	Off Peak Charge				-40.00%
			Price after change proposed in TRM #812 on 6/19/98		
Access Area A, B, and C					
	FeatureLink- 2+ pkg category (monthly)	\$8.00	\$9.00		12.50%
	FeatureLink- 5+ pkg category (monthly)	\$8.00	\$9.00		12.50%
	FeatureLink- 12+ pkg category (monthly)	\$8.00	\$9.00		12.50%
	FeatureLink- 20+ pkg category (monthly)	\$8.00	\$9.00		12.50%

Attachment 2

		Price after change proposed in TRM #352 on 4/3/98	Price after change proposed in TRM #817 on 8/7/98	Price after change proposed in TRM #933 on 9/14/98	Percentage change
Automatic Volume Discounts					
Bands A&B	Business Usage Discount Schedule (First \$52.00)	0.00%	0.00%	0.00%	
	Business Usage Discount Schedule (52.01-104)	11.50%	11.50%	0.00%	-100.00%
	Business Usage Discount Schedule (104.01-260)	23.10%	23.10%	20.00%	-13.42%
	Business Usage Discount Schedule (260.01-832)	32.70%	32.70%	30.00%	-8.26%
	Business Usage Discount Schedule (832+)	50.00%	50.00%	50.00%	
Band C	Business Usage Discount Schedule (First \$52.00)	0.00%	0.00%	0.00%	
	Business Usage Discount Schedule (52.01-104)	0.00%	0.00%	0.00%	
	Business Usage Discount Schedule (104.01-260)	30.00%	25.00%	25.00%	-100.00%
	Business Usage Discount Schedule (260.01-832)	45.00%	50.00%	50.00%	-100.00%
	Business Usage Discount Schedule (832+)	50.00%	50.00%	50.00%	-100.00%
		Price after change proposed in TRM #1185 on 10/30/98			
Remote Call Forwarding					
	Monthly Recurring Charge	\$14.50	\$16.50		13.79%

Attachment B: ICC Orders

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
vs	:	
Illinois Bell Telephone Company	:	98-0860
Investigation into specified competi-	:	
tive tariffs to determine proper	:	
classification of the tariffs and to de-	:	
termine whether refunds are	:	
appropriate	:	

ORDER

By the Commission:

In a Staff Report issued on November 25, 1998, the Staff of the Telecommunications Division ("Staff") of the Illinois Commerce Commission ("Commission") detailed the reclassification by Illinois Bell Telephone Company ("IBT" or "Ameritech") of certain specified tariff offerings from noncompetitive to competitive. These reclassifications cover a variety of services, with the reclassifications taking place from March 1997 to November 1998.

The Staff alleges that the specified tariffs do not comply with the dictates of Section 13-502(b) of the Public Utilities Act ("Act") or the conditions set forth by the Commission in its order in Dockets 95-0135 and 95-0179 regarding the designation of competitive telecommunications services by Ameritech. The Staff claims that Ameritech failed to provide any information regarding its market share for each reclassified service; the trend of its market share for the reclassified service; specific examples of services that compete with Ameritech's service; whether there are any functional differences in the Ameritech's service and that of a competitor; an explanation of the functional differences between those services to the extent they exist; or an analysis of the impact on demand of any price increase associated with the reclassification.

Section 13-502(b) of the Public Utilities Act provides in relevant part:

A service shall be classified as competitive only if, and only to the extent that, for some identifiable class or group of customers in an exchange, group of exchanges, or some other clearly defined geographical area, such service, or its functional equivalent, or a substitute service, is reasonably available from more than one provider, whether or not any such provider is a telecommunications carrier subject to regulation under

this Act. All telecommunications services not properly classified as competitive shall be classified as noncompetitive. The Commission shall have the power to investigate the propriety of any classification of a telecommunications service on its own motion and shall investigate upon complaint. In any hearing or investigation, the burden of proof as to the proper classification of any service shall rest upon the telecommunications carrier providing the service.

Section 13-502(e) authorizes the Commission to order refunds for improperly classified services.

The Commission, being fully advised in the premises, is of the opinion and finds that:

- (1) Illinois Bell Telephone Company is engaged in the business of providing telecommunications services to the public in the State of Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;
- (2) the Commission has jurisdiction over Illinois Bell Telephone Company and the subject matter of this proceeding;
- (3) the Staff Report dated November 25, 1998 should be made a part of the record of this proceeding;
- (4) the recitals of fact set forth in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;
- (5) the Commission should initiate an investigation pursuant to Section 13-502 of the Public Utilities Act to determine whether service provided by Illinois Bell Telephone Company pursuant to tariffs listed in the Appendix to this order are properly classified as competitive and to determine refunds for any retail services found to be not properly classified as competitive, as well as, their wholesale counterparts.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that, pursuant to Section 13-502 of the Public Utilities Act, an investigation is initiated into whether the classification as competitive of the services provided by Illinois Bell Telephone Company pursuant to the tariffs listed in the Appendix to this order is proper and to determine refunds for any retail services found to be not properly classified as competitive, as well as their wholesale counterparts.

IT IS FURTHER ORDERED that Illinois Bell Telephone Company is made a respondent to this proceeding and that said respondent appear at a time and place established by the Hearing Examiner appointed in this proceeding and to show cause

and present evidence why the classification of the listed services and tariffs is properly competitive.

IT IS FURTHER ORDERED that the Chief Clerk serve a copy of this Order on the designated agent of the respondent.

IT IS FURTHER ORDERED that respondent provide to the Chief Clerk, no more than seven business days after the date of this Order, a complete list of all municipalities within which the respondent provides service. Include all such municipalities irrespective of whether the municipality itself is a customer, and irrespective of whether all or merely a fraction of the residents and other entities within the municipality are customers of the respondent. The purpose of this ordering paragraph is to allow the Commission to fulfill the notice requirements of Section 10-108 of the Public Utilities Act.

IT IS FURTHER ORDERED that the Staff Report dated November 25, 1998 be made a part of the record in this proceeding.

IT IS FURTHER ORDERED that this proceeding is consolidated pursuant to 83 Ill. Adm. Code 200.600 with the proceeding initiated on this date to establish filing requirements for Illinois Bell Telephone Company for the reclassification of noncompetitive services as competitive services.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By Order of the Commission this 30th day of November, 1998.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Illinois Bell Telephone Company	:	98-0861
	:	
Establishment of filing requirements	:	
for the reclassification of noncom-	:	
petitive services as competitive	:	
services	:	

ORDER

By the Commission:

Section 13-502(b) of the Public Utilities Act reads in relevant part:

A service shall be classified as competitive only if, and only to the extent that, for some identifiable class or group of customers in an exchange, group of exchanges, or some other clearly defined geographical area, such service, or its functional equivalent, or a substitute service, is reasonably available from more than one provider, whether or not any such provider is a telecommunications carrier subject to regulation under this Act. All telecommunications services not properly classified as competitive shall be classified as noncompetitive.

In a Staff Report dated November 25, 1998, the Staff of the Telecommunications Division of the Illinois Commerce Commission ("Commission") recounts the procedural and evidentiary history of Dockets 95-0135/95-0179 Consolidated in which the Commission investigated certain reclassifications of services from noncompetitive to competitive by Illinois Bell Telephone Company ("IBT" or "Ameritech"). As detailed in the Staff Report, the Commission indicated that it would consider three issues in determining whether a service is competitive under Section 13-502(b) of the Act:

- (1) The functional equivalence of alternative services; or
- (2) the substitutability of alternative services; and
- (3) the reasonable availability of those functional equivalent or substitute services.

The Staff Report lists specified tariff filings made by IBT from March 1997 to November 1998 that reclassified noncompetitive services as competitive. It is the contention of the Staff that the competitive nature of these tariffs cannot be ascertained

because IBT has failed to supply documentation that would allow the Staff to review the tariffs to determine whether the considerations expressed in Dockets 95-0135/95-0179 Consolidated have been met. In a separate proceeding initiated today, the Commission is beginning an investigation of certain IBT competitive tariffs to determine whether the subject services are properly filed as competitive. It is Staff's recommendation that the Commission initiate a proceeding to establish filing requirements for the reclassification by IBT of noncompetitive services as competitive services. On the basis of the information provided in the Staff Report, the Commission agrees that such a proceeding be initiated.

The Commission, being fully advised in the premises, is of the opinion and finds that:

- (1) Illinois Bell Telephone Company is engaged in the business of providing telecommunications services to the public in the State of Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;
- (2) the Commission has jurisdiction over Illinois Bell Telephone Company and the subject matter of this proceeding;
- (3) the Staff Report dated November 25, 1998 should be made a part of the record of this proceeding;
- (4) the recitals of fact set forth in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;
- (5) the Commission should initiate a proceeding to establish filing requirements for the reclassification by Illinois Bell Telephone Company of noncompetitive services as competitive services.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a proceeding be initiated to establish filing requirements for the reclassification by Illinois Bell Telephone Company of noncompetitive services as competitive services pursuant to Section 13-502 of the Public Utilities Act.

IT IS FURTHER ORDERED that Illinois Bell Telephone Company is made a respondent to this proceeding and that said respondent appear at a time and place established by the Hearing Examiner appointed in this proceeding.

IT IS FURTHER ORDERED that the Chief Clerk serve a copy of this Order on the designated agent of the respondent.

IT IS FURTHER ORDERED that the Staff Report dated November 25, 1998 be made a part of the record in this proceeding.

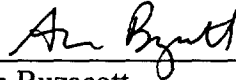
IT IS FURTHER ORDERED that this proceeding is consolidated pursuant to 83 Ill. Adm. Code 200.600 with the proceeding initiated on this date to investigate specified competitive tariffs filed by Illinois Bell Telephone Company to determine the proper classification of the tariffs and to determine whether refunds are appropriate.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By Order of the Commission this 30th day of November, 1998.

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on March 31, 1999.



Alan Buzacott
Regulatory Analyst
1801 Pennsylvania Ave. NW
Washington, D.C. 20006
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CERTIFICATE OF SERVICE

I, Vivian I. Lee, do hereby certify that copies of the foregoing Opposition were sent via first class mail, postage paid, to the following on this 31st day of March, 1999.


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**HAND DELIVERED


Vivian I. Lee